**U.S. Information Services, Inc. *and* Communications Workers of America, AFL–CIO.** Case 2–CA–34668–1

May 21, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On November 21, 2003, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, the Charging Party, the Communications Workers of America, AFL–CIO (the CWA), filed an answering brief, and the Respondent filed a reply brief. The CWA filed cross-exceptions and a supporting brief, to which the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified, and to adopt the recommended Order as modified and set forth in full below.[2]

1. The judge found in his Conclusions of Law and recommended Order that the Respondent violated Section 8(a)(5) by refusing to provide the Union with information relating to 2001 employee Christmas bonuses. The CWA excepts to the judge's failure to require the Respondent to furnish information regarding *all* bonuses, not just the Christmas bonuses. We find merit in this exception. The CWA's letter, dated May 28, 2002, requested "[a] list of all bonuses." As found by the judge, the Respondent refused to provide this information to the Union. Accordingly, we modify the Conclusions of Law and Order to require the Respondent to provide the Union with information regarding all of the bonuses it gave to its employees.[3]

2. The CWA excepts to the judge's failure to address the General Counsel's contention that the Respondent did not furnish the CWA with certain additional information the Union requested. We find merit in that exception. By letter dated August 12, 2002, the CWA asked the Respondent for: (1) each unit employee's gross salary as reported to the IRS in 2001; and (2) each unit employee's total hours and overtime hours worked in 2001. At the hearing, the General Counsel made clear that he sought an order compelling the Respondent to provide this information.

In finding that the Respondent's violation of the Act was confined to the bonus information, the judge noted that most of the other requested information had been provided by the Respondent or did not exist. However, the previously disclosed information did not include gross salaries, total hours, or overtime hours, and the Respondent has not shown that this information does not exist.

We find that information regarding the gross salaries of unit employees, as reported to the IRS in 2001, is presumptively relevant to the performance of the statutory duties of the employees' exclusive collective-bargaining representative. *New Surfside Nursing Home*, 330 NLRB 1146, 1149 (2000) (finding presumptively relevant the IRS Form W-2 for each unit employee). Similarly, information regarding the total hours and overtime hours worked by each unit employee is presumptively relevant. *Blue Cross & Blue Shield of New Jersey*, 288 NLRB 434, 436 (1988). The Respondent has failed to rebut this presumption, and therefore we find that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish this information.

3. The CWA excepts to the judge's finding that Local 1106, not the CWA, is the employees' exclusive bargaining representative. We find it unnecessary to pass on which of the two unions is the employees' exclusive bargaining representative. The Respondent did not defend

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We find it unnecessary to rely on the judge's statements in the remedy section of his decision regarding the merits of a potential contract claim and the appropriateness of any remedy under the contract.

[2] The CWA excepts to the judge's failure to order that the notice be mailed to the Respondent's employees. We find merit to that exception. The Respondent's unit employees do not have a fixed worksite. Accordingly, in order to ensure that they are informed of our decision, we shall modify the judge's recommended Order to require that the Respondent, in addition to posting the notice at its Nyack facility, shall mail the Notice to all affected employees. See *Air 2, LLC*, 341 NLRB No. 23 (2004).

[3] Chairman Battista agrees that the Respondent violated Sec. 8(a)(5) and (1) by failing and refusing to furnish the CWA with bonus-related information. Chairman Battista finds that the bonus information is relevant to the Union's statutory duty to bargain about wages. Chairman Battista does not, however, rely on the judge's statement in sec. III, par. 5 of this decision, that the bonus in this case "constitute[d] wages," inasmuch as the record does not establish that the bonus had been granted with such regularity as to create an expectation of receipt among employees. See *Laredo Coca Cola Bottling Co.*, 241 NLRB 167, 174 (1979), enfd. 613 F.2d 1338 (5th Cir. 1980), cert. denied 449 U.S. 889 (1980).

its refusal to furnish the requested information on the ground that the request was made by a party that is not its employees' exclusive bargaining representative. Accordingly, we need not decide which union represents the employees.[4]

ORDER

The National Labor Relations Board orders that the Respondent, U.S. Information Services, Inc., Nyack, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide, upon request of May 28, August 12, and October 29, 2002, a list of all bonuses given to employees, the names and titles of employees who have received bonuses, a copy of any bonus program, a statement of any company policy regarding any bonus, each unit employee's gross salary as reported to the IRS in 2001, each unit employee's total hours worked in 2001, each unit employee's total overtime hours worked in 2001; all of which information is relevant and necessary for the performance of the statutory duties of the employees' collective-bargaining representative.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Furnish to the employees' collective-bargaining representative the information set forth above.

(b) Within 14 days after service by the Region, post at its facility in Nyack, New York, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Mail a copy of the attached notice marked "Appendix" to all current employees and former employees employed by the Respondent at any time since May 28, 2002. Such notice shall be mailed to the last known address of each of the employees above. Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be mailed within 14 days after service by the Region.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 21, 2004

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| Robert J. Battista, | Chairman |
| Wilma B. Liebman, | Member |
| Dennis P. Walsh, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOAR

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

[4] Chairman Battista agrees with his colleagues that the Respondent did not raise this defense. However, Chairman Battista would find, on this record, that Local 1106 is the employees' exclusive bargaining representative. The complaint so alleged, the answer so admitted, and the CWA's posthearing brief to the judge states that "Local 1106 of the CWA ('CWA Local 1106') has represented employees at USIS since 1991 when it was voluntarily recognized as the bargaining representative without a board election."

Chairman Battista further finds that CWA Staff Representative Larry DeAngelis was acting as Local 1106's agent when making the information request. He notes that Local 1106 had called in DeAngelis to assist it with bargaining, the Respondent knew that fact, and the information DeAngelis sought related to the bargaining process.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail or refuse to provide, as requested on May 28, August 12, and October 29, 2002, a list of all bonuses given to employees, the names and titles of employees who have received bonuses, a copy of any bonus program, a statement of any Company policy regarding any bonus, each unit employee's gross salary as reported to the IRS in 2001, each unit employee's total hours worked in 2001, each unit employee's total overtime hours worked in 2001; all of which information is relevant and necessary for the performance of the statutory duties of the employees' collective bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL furnish to the employees' collective-bargaining representative the information set forth above.

U.S. INFORMATION SERVICES, INC.

*Vonda Marshall Esq.,* for the General Counsel.
*Laura G. Weiss Esq.* and *Michael W. Applebaum Esq*., for the Respondent.
*Atul Talwar Esq*., Counsel for the Union.

## DECISION

### STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in New York, New York, on October 7 and 8, 2003. The charge and amended charges were filed on June 10 and July 12, 2002. The complaint was filed on January 30, 2003, and it was amended on March 24 and May 13, 2003. In substance the amended compliant alleges;

1. That the Union has been the recognized collective-bargaining agent of certain employees and that the most recent collective-bargaining agreement runs from April 1, 2002 to March 31, 2007.

2. That on May 28, 2002, the Union requested and the Respondent refused to furnish the following information; a current list of employees with their dates of hire, rates of pay, job positions, addresses, telephone numbers, and copies of their job descriptions; copies of any company wage or salary plans; copies of any fringe benefit plans including pension plans; copies of any personal plans including descriptions of benefits, layoff and recall policies and bonuses; copies of any separate oral or written employment agreements; copies of all disciplinary notices, warnings records of disciplinary actions for the preceding year; information concerning the Respondent's last layoff and recall, including the reason for layoff; and information about any alter ego relationship that might exist between the Respondent and U.S. Integrated Services, Inc.

3. That on or about August 12, 2002, the Union requested and the Employer refused to furnish information about the gross salaries of bargaining unit employees for the year 2001 as reported to the IRS; the total hours worked by each bargaining unit employee; and the overtime hours worked by each bargaining unit employees.

4. That on or about October 29, 2002, the Union modified the August 12, 2002 information request to ask for a copy of all current personnel polices, practices, or procedures; a copy of all fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care, or any other plans which relate to the employees; copies of all disciplinary notices, warnings, or records of disciplinary personnel actions for the last year; specific information concerning layoffs and recalls; bonuses, special benefits, prizes or rewards given to employee; the names and titles of employees that have received any bonuses, special benefits, prizes or rewards given to employees; copies of all bonuses and benefit programs; the 2001 gross salaries for all bargaining unit members as reported to the IRS; total hours worked by each bargaining unit member and overtime hours worked by each bargaining unit member.

5. That on or about November 19, 2002, the Union modified its October 29 request to ask for any bonuses given to represented employees in the past; the total salaries reported to the IRS for 2001; the total hours worked by each represented employee for the 2001 calendar year; and the total overtime hours worked by each represented employee for the 2001 calendar year.

At the opening of the trial, the General Counsel stated that she wanted an Order compelling the Respondent to furnish information relating to, (a) bonuses granted to employees; (b) the total IRS reported wages paid for 2001; (c) the total hours and overtime hours worked in 2001; and (d) any separate oral or written agreements that the Company maintained with employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The complaint alleges, the answer admits and I find that the Company is an employer engaged in commerce as defined in Section 2(2), (6), and (7) of the Act. I also conclude that Local 1106, Communications Workers of America is a labor organization as defined in Section 2(5) of the Act.

I note that the Union that was recognized as the collective-bargaining agent was Local 1106, Communications of America. Although, the International Union has, from time to time, been brought it to assist Local 1106 and although this is clearly a legitimate function of the International, the proper party to the bargaining relationship is Local 1106 and not the International Union.

#### II THE ALLEGED VIOLATION

The Employer, which was founded in 1990, is located in Nyack, New York, and is engaged in installing telephone systems in new construction projects. It works in New York (mainly Manhattan), New Jersey, and Connecticut. At the time of these events it had about 80 or 90 bargaining unit employees.

The Company recognized the Union in 1991 at which time a contract was executed. There have been three renewal contracts to the present. The penultimate collective-bargaining

agreement ran for a term from April 1, 1997 to March 30, 2002. The most recent contract was executed on October 18, 2003, and runs retroactively from April 1, 2002 to March 30, 2007.

It appears that there is substantial competition between this company, whose employees are represented by Local 1106 of the Communication Workers and other contractors whose employees are represented by Local 3, IBEW. Indeed, the Respondent asserts that Local 3 members and representatives have engaged in conduct to harass the Respondent and its employees when they work on jobsites in New York City. And in this regard, the Company's parent corporation has filed an anti-trust lawsuit against Local 3 and Local 3 contractors alleging unfair competition. This is all very interesting, but it is not relevant to the issues in this case.

In some years between 1991and 2002, the Company has given Christmas bonuses to some, but not all of its bargaining unit employees. The total amount of the bonuses, when given, has been determined by the amount of profits earned for the year. Additionally, the identity and amounts of money given to each employee has been determined by the owners based mostly on their opinion about their degree of dedication in performing services to the Company. These bonuses have not been described or referred to in the successive contracts between 1991 and 2002. Indeed, the Union's witnesses testified, without contradiction, that they were not even aware of this bonus practice until May 22, 2002, when they were advised of this practice by some of employees who attended the meeting held on that date.

On January 15, 2002, the Union sent a notice to the Company indicating that the Union, in accordance with Section 8(d) of the Act wished to terminate the existing agreement and negotiate for a new contract.

Subsequently there was bargaining between Local 1106's president, Tony Caudullo, and the Company's president, Joseph Lagana.

On or about May 15, 2002, the Company made what it described as a last final offer and asked that it be presented to the membership for a vote.

On May 22, 2002, the Union held a meeting where many of the Company's employees attended and some expressed their desire to take a vote on the Employer's last offer. The Union's representatives stated that they did not feel that the Employer's offer was adequate and refused to have a vote. At this meeting, a number of employees told the union's representatives that a small group of employees had gotten bonuses the previous Christmas, in amounts of up to $30,000.

Subsequent to the meeting, Caudillo circulated a memo to employees asserting that certain "elite" members were getting favorable treatment by the company in that they had received large bonuses that were not received by anyone else.

While Caudillo kept the International Union informed of the negotiations, he asked for more active assistance at or about the time of the May 22 meeting. And to this end, Larry DeAngelis stepped into the picture and got directly involved in the negotiations.

On May 28, 2002, DeAngelis sent a letter demanding certain information. This letter, which was received in early June, was broken down into four sections. But in my opinion, the primary motivation for the request was the fact that the Union learned, for the first time at the May 22 meeting, that some employees were getting large Christmas bonuses. (All during the preceding negotiations, neither side requested any information from the other.) To the extent that the complaint alleges that certain information was asked for and refused, the request asked for the following information:

1. A list of current employees including their names, dates of hire, rates of pay, job classifications, addresses, phone numbers, dates that they completed any probationary period and social security numbers.

2. A copy or description of any personal policies, practices, or procedures.

3. A copy of all fringe benefit plans, including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship training, legal services, and child care.

4. Copies of all current job descriptions.

5. Copies or a description of any wage or salary plans.

6. Copies of all disciplinary notices, warnings, or other disciplinary actions.

7. The dates and names that employees were initially employed or laid off and the manner that employees were recalled.

8. A list of all bonuses including the names and titles of any employees who received a bonus.

9. Copies or descriptions of any written or oral employment agreement that the company may have with any of its employees.

10. Information, which could relate to whether an "alter ego" relationship existed between the Respondent and a company called U.S. Integrated Services, Inc.[1]

With respect to the request, it should be noted that some of the information simply did not exist. There are no separate employment agreements, no personal policy manuals, no childcare, and no legal services plans.

Other pieces of information already were in the hands of the Union by virtue of its role as the collective-bargaining agent. For example, Local 1106 was privy to the apprenticeship training program, the Employer's 401(k) plan, the health and welfare plan, and the Company's wage policies, because all of these were benefits which were described and negotiated by the parties in the previous collective-bargaining agreement. Additionally, under the terms of the collective-bargaining agreement, the Employer forwards to Local 1106, monthly reports containing the names, addresses, social security numbers, weekly rates of pay, dates of employment, marital status, and the names of dependents. Further, the Company has complied with the contractual requirement that it give written notice to the Union any time it discharges, suspends, or demotes any employee. There is no contention that any of the information that the Union regularly receives from the Employer was discontinued during the period when the negotiations were conducted.

[1] Lagana asserts that he and his sons have a minority interest in U.S. Integrated Services Inc., which he described as a separate corporation doing different work, in a different geographic area and having a collective bargaining agreement with another local union of the Communications Workers of America.

As to the information relating to "alter ego," there was no evidence to show that at the time of the request, the Union had any evidence to support a contention that U.S. Integrated Services, Inc. was an alter ego. And as I understand the General Counsel's case, she does not contend that the Employer violated the Act by refusing to furnish this information.

This leaves us with only one remaining category of information request and this involves the bonuses. In this regard, there is no question that the Employer took the position, during the entire period of the negotiations (and thereafter), that it would not furnish this information to the Union.

Subsequent to May 28, 2002, the parties continued their negotiations from July to October 2002.

During that time, the Union modified its information request on three occasions. But again, the bottom line was that the primary information requested was information relating to bonuses. In a letter dated August 12, 2002, DeAngelis wrote:

In addition to the information previously requested, the Union requests:

> All bargaining unit member's gross salaries for 2001 as reported to the IRS
> Total hrs worked by each bargaining unit member.
> Overtime hrs worked by each bargaining unit members.
> This information is needed so that the Union can respond to statements made by the Company and bargaining unit members in reference to bonuses paid out during the 2001 fiscal year.
> Bonuses affect the terms and conditions of employment for bargaining unit members making it a mandatory subject of bargaining.

With information about the gross wages and total hours of each unit employee, the Union could figure out for itself, the amount of the bonuses by comparing the total IRS reported wages with the total wages an employee should have earned under the terms of the collective-bargaining agreement.

As noted above, a new contract was reached on October 18, 2002, which was retroactive to April 1, 2002. As part of the deal, the Employer agreed that it would no longer give bonuses to any represented employees unless it first bargained with the Union about this subject. (The contract provides for certain bonuses given to apprentices but that is a different matter.) Also, the Employer agreed to the Union's demand that it convert its 401(k) plan to a union administered defined benefit pension plan.

The Company points out that during the course of the bargaining, the Union threatened to withhold union membership cards from the employees and threatened to disclaim interest in representing them unless the Company met the Union's demands. This I found somewhat unusual since one does not normally think that a union's threatened disclaimer of interest will likely put pressure on an employer to concede to bargaining demands. But I suppose that in this particular circumstance it makes sense because, as a practical matter, it appears that in order to work on construction sites in New York City (where other unions represent the various trades), it is difficult, at best, to do work without being a union shop and without one's employees being able to produce union cards on request. Once again, although interesting, it is my opinion that evidence to this effect is not relevant to the issues in this case. If the Union was using this tactic to pressure the Company into meeting its demands, this does not show and cannot show that the Union was bargaining in bad faith or that its request for the bonus information was not made in good-faith purpose.

## III. ANALYSIS

Much of the information requested by the Union on May 28, 2002, and thereafter, either did not exist or was already in the hands of the Union by virtue of regular and periodic reports sent by the Employer. In this respect, I therefore conclude that the Employer was under no obligation to furnish either nonexistent information or information that it had already furnished, was in the possession of the Union and which was current as of the time of the request.

Nor do I conclude that Company's failure to respond to the Union's request insofar as it asked for "alter ego" information was violative of the Act. (As I understand the General Counsel's position, she does not claim that this refusal violated the Act.)

Therefore, the remaining issue is whether the Company's refusal to furnish information regarding bonuses that it had given in 2001 was a violation of the Act.

Once a bargaining relationship has been lawfully established, each side has a duty to bargain in good faith. Encompassed within that duty is the obligation to furnish to the other side, upon request, information that is relevant to the bargaining process. *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61 (3d Cir. 1965); *Kroger Co.*, 226 NLRB 512 (1976). Moreover, information relating to the employees' current terms and conditions of employment are presumptively relevant. This would include information relating to their wage rates and other terms and conditions of unit employees as well as their names, addresses, and phone numbers. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *NLRB v. Boston Herald-Traveler Corp.*, 209 NLRB F.2d 134 (1st Cir. 1954); *Gloversville Embossing*, 314 NLRB 1258 (1994), *Toms Ford*, 253 NLRB 888, 895 (1990); *Georgetown Holiday Inn*, 235 NLRB 485, 486 (1978). Finally, the duty to bargain encompasses not only the duty to furnish relevant information, but also the duty to furnish such information in a timely manner. There is no point in requiring a party to furnish information if it can delay its production so that its utility will be diminished or lost. *Gloversville Embossing*, supra; *NLRB v. John S. Swift Co.*, 277 F.2d. 641 (7th Cir. 1960); *Tennessee Steel Processor*, 287 NLRB 1132 (1988).

In my opinion, bonuses given to some bargaining unit employees, in the form of money, for whatever reason, constitute wages. The fact that the Company has given these Christmas bonuses on a nonregular or intermittent basis to some but not all of its bargaining unit employees, does not mean that this money did not constitute remuneration for services performed by these employees. As such, information regarding this practice is, in my opinion, presumptively relevant. For example, if a company has a habit of giving amounts of hidden money to a subset of bargaining unit employees, this is information that a union would want to know about in order to determine its wage demands for the entire unit and to formulate proposals as to

how to divide the available pile of money. The assertion that the Christmas bonuses were discretionary is therefore simply not relevant for purposes of this case.[2]

Nor can I agree that the Union's request for information regarding the bonuses was made in bad faith. As stated above, it is my opinion that the information requested was presumptively relevant and that the Respondent presented no evidence and made no credible assertion that the request was made in bad faith.

## CONCLUSIONS OF LAW

1. By refusing to furnish to Local 1106, Communications Workers of America, information relating to Christmas bonuses granted to some of its bargaining unit employees in 2001, the Respondent has violated Section 8(a)(5) of the Act.

2. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) & (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The parties, even without the bonus information, still managed to complete and sign a collective-bargaining agreement in October 2002, and this contract does not expire until 2007. Moreover, as the Company agreed to cease its practice of granting Christmas bonuses and to first bargain with the Union if it should ever desire to resume this practice, it is difficult to see what purpose would be served by requiring it to turn over the 2001 bonus information. It may be true that the Company breached the 1997 to 2002 agreement by giving these bonuses to a select group of employees. But that breach did not inure to the detriment of any other employees because during the life of that agreement they received what the contract called for in terms of their wages and benefits. That is, there can be no argument made that a contractual violation of this sort could require the Company to compensate other employees for a benefit that these other employees were not entitled to receive under the collective-bargaining agreement. (They got what they were contractually entitled to get).

Nevertheless, as I have concluded that the Company violated the Act by refusing to furnish to the Union the bonus related information for 2001, I shall recommend that it furnish this information if requested to do so by the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

## ORDER

The Respondent, U.S. Information Services Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish information relevant to collective bargaining such as information relative to Christmas bonuses given to some of the bargaining unit employees in 2001.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request furnish to the Union the 2001 bonus information described above.

(b) Within 14 days after service by the Region, post at its facility in Nyack, New York, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 21, 2003

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and obey this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

[2] The Respondent's reliance on *NLRB v. Wonder State Mfg. Co.*, 344 F.2d 210 (8th Cir. 1965), is in my opinion, misplaced. First, the view of the circuit court is not the view of the Board and until or unless the Supreme Court holds to the contrary, I am bound to follow Board precedent. Secondly, in that case, the issue was whether the Company's unilateral discontinuance of Christmas bonuses constituted a violation of Sec. 8(a)(5) of the Act. In concluding that it did not, the court held that the bonuses in question, were more in the nature of a gift than in the nature of employee compensation. But even using that rationale, the facts in the present case show that the bonuses were specifically given to reward unusual or extraordinary work performance by the employees who had received the bonuses. As such, the bonuses, in my opinion were intended as and were received as compensation for services and not as mere gratuities.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to furnish to the Union, when requested, information which is relevant to collective bargaining.

WE WILL NOT interfere with, restrain or interfere with the rights guaranteed to our employees by Section 7 of the Act.

WE WILL upon the request of the Union, furnish to it information regarding the granting of Christmas bonuses in 2001.

U.S. INFORMATION SERVICES INC.